



March 29, 2001

Ms. Donna Garcia Davidson
Deputy General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2001-1258

Dear Ms. Davidson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145429.

The Office of the Governor (the "office") received a request for applications of individuals seeking gubernatorial appointments. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You have submitted a blank state appointment application as responsive to the request. We are unable to discern from this document, nor do you indicate, what information responsive to the request would be considered confidential by law. Therefore, the requested information may not be withheld from disclosure under section 552.101 of the Government Code.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

The submitted document contains a blank for each applicant to insert a driver's license or state identification number. Therefore, you must withhold all Texas driver's license numbers and Texas identification numbers provided to the office on applications for state appointment under section 552.130.

We note that the submitted document contains blanks for each applicant to insert a home address, home telephone number, e-mail address, fax number, cellular phone number, and spouse's name. Section 552.117 of the Government Code excepts from disclosure the home addresses, home telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential in accordance with section 552.024. We have read this exception to include the home e-mail addresses, home fax numbers, and personal cellular phone numbers of governmental officials or employees as well. Additionally, we note that section 552.117 does not apply to information provided by applicants who did not receive gubernatorial state appointments and, thus, did not become state officials or employees.

Therefore, the office must withhold the home address, home telephone number, home e-mail address, home fax number, personal cellular phone number, and family member information of each applicant selected for state appointment that filed an election under section 552.024 before the request for information was made. Gov't Code § 552.117; *see* Open Records Decision No. 455 at 2 (1987) (section 552.117 does not apply to applicants for governmental employment, but employees hired by the governmental body). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989).

Section 552.024 provides that each official shall elect whether to allow access to section 552.117 information in a signed writing not later than the 14th day after the date on which the official is appointed. If the official fails to state the person's choice within the fourteen days, the information is subject to public access. Gov't Code § 552.024(d). We conclude that newly appointed officials have fourteen days after their appointment begins to elect whether to authorize access to information enumerated in section 552.117, during which time the office must deny public access to their section 552.117 information. If the officials elect to deny access prior to the receipt of a request for information, then the office must withhold their home addresses, home telephone numbers, home e-mail addresses, home fax numbers, personal cellular phone numbers, and family member information. If a request is received after the fourteen days have expired and the newly appointed officials have failed to elect or elect to allow access, then the office must release their home addresses, home telephone numbers, home e-mail addresses, home fax numbers, personal cellular phone numbers, and family member information.

Finally, you request that this office issue a previous determination because the form of the submitted state appointment application does not change. Therefore, as per your request, this letter ruling shall serve as a previous determination under section 552.301(a) that: (1) the Texas driver's license numbers and Texas identification numbers submitted to the office on such state appointment applications are excepted from disclosure under section 552.130; (2)

newly appointed officials have fourteen days after their appointment begins to elect whether to authorize access to information enumerated in section 552.117, during which time the section 552.117 information contained in their state appointment applications is excepted from public disclosure under section 552.117; (3) if appointed officials elect to deny access to their section 552.117 information prior to the receipt of a request for information, the section 552.117 information contained in their state appointment applications is excepted from public disclosure under section 552.117; and (4) if a request is received after the fourteen days have expired and the newly appointed officials have failed to elect or elect to allow access, then the section 552.117 information contained in their state appointment applications is not excepted from disclosure under section 552.117. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 at 7 (2001).

This previous determination applies only to the following types of information submitted to the Office of the Governor by an applicant for gubernatorial state appointment on an application for state appointment: Texas driver's license numbers, Texas identification numbers, home addresses, home telephone numbers, home e-mail addresses, home fax numbers, personal cellular phone numbers, and family member information. *See* Open Records Decision No. 673 at 7 (2001). Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the Office of the Governor need not ask for a decision from this office again with respect to these types of information submitted to the Office of the Governor by applicants for gubernatorial state appointment on an application for state appointment. *See id.*

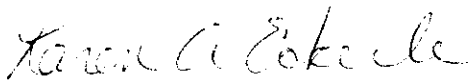
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss of the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/er

Ref: ID# 145429

Encl: Submitted documents

cc: Ms. Sharon Jayson
Austin American-Statesman
305 South Congress Avenue
Austin, Texas 78704
(w/o enclosures)